



FISCAL MEMORANDUM

SB 1617 - HB 1398

May 3, 2021

SUMMARY OF ORIGINAL BILL: Prohibits a health insurance issuer, a managed health insurance issuer, a pharmacy benefits manager (PBM) or third-party payer from reimbursing a 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies that are not 340B entities, and from assessing any fee, or other adjustment upon the 340B entity that is not equally assessed on non-340B entities, or exclude a 340B pharmacy from the PBM's or third party's pharmacy network based on criteria that is not applied to non-340B entities.

Prohibits a PBM and third parties from discriminating against a 340B entity or a pharmacy that participates in a health plan as an entity authorized to participate under 42 U.S.C. § 256b in a manner that prevents or interferes with the patient's choice to receive those drugs from the 340B entity.

Requires a PBM to permit a person covered under a group medical benefit contract, or a pharmacy benefit contract, that provides coverage for prescription drugs to obtain prescription drugs, including specialty drugs, from a physician's office, hospital outpatient infusion center providing and administering the prescription drug, or pharmacy.

Prohibits a PBM from imposing coverage or benefits limitations, or requiring a person covered under a group medical benefit contract, or a pharmacy benefit contract, to pay an additional fee, higher copay, higher coinsurance, second copay, second coinsurance, or other penalty when obtaining prescription drugs, including specialty drugs, from a physician's office, hospital outpatient infusion center providing and administering the prescription drug, or pharmacy. Prohibits a PBM from interfering with a patient's right to choose a pharmacy or provider of choice, including inducement, steering, or offering financial or other incentives.

Requires a PBM or covered entity to base the calculation of any coinsurance for a prescription drug or device on the allowed amount of the drug or device. Prohibits a PBM from charging a covered entity an amount greater than the reimbursement paid by a PBM to a contracted pharmacy for the prescription drug or device.

Establishes that a PBM has a fiduciary responsibility to report to the plan and the patient any benefit percentage that either are entitled to as a benefit as a covered person.

Requires a covered entity to provide the cost, benefit and coverage data upon request of an enrollee, an enrollee's healthcare provider, or the authorized representative of an enrollee. Requires requested data be accurate, provided in real time and in the preferred format of the requesting party.

Requires a covered entity to provide data for each drug covered under the enrollee's health plan that includes: (1) the enrollee's eligibility information for the drug; (2) a list of any clinically appropriate alternatives to drugs covered under the enrollee's health plan; (3) cost-sharing information for the drugs and the clinically appropriate alternatives; and (4) applicable utilization management requirements for the drugs or clinically appropriate alternatives, including prior authorization, step therapy, quantity limits, and site-of-service restrictions.

Prohibits a covered entity from: (1) restricting, prohibiting, or otherwise hindering a healthcare provider from communicating or sharing data, additional information on covered alternatives, or from executing options that reduce payment for a patient; or (2) penalizing a healthcare provider for information disclosures or prescribing, administering or ordering covered alternative drugs.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$1,476,700/FY21-22
\$852,700/FY22-23 and Subsequent Years

Increase Federal Expenditures – \$5,851,300/FY21-22
\$2,014,000/FY22-23 and Subsequent Years

IMPACT TO COMMERCE OF ORIGINAL BILL:

Increase Business Revenue – \$7,328,000/FY21-22
\$2,866,800/FY22-23 and Subsequent Years

Increase Business Expenditures – \$7,328,000/FY21-22
\$2,866,800/FY22-23 and Subsequent Years

Jobs Impact – Additional 10 positions

Other Commerce Impact – Due to multiple unknown factors, additional impacts to commerce and jobs cannot be reasonably determined.

SUMMARY OF AMENDMENT (008088): Deletes and rewrites all language after the enacting clause such that the substantive changes are: (1) prohibits a PBM or a covered entity from interfering with a patient's right to choose a contracted pharmacy or contracted provider of choice, in a manner that violates § 56-7-2359 or by other means, including inducement, steering, or offering financial or other incentives; (2) requires a PBM or covered entity to base the calculation of any coinsurance or deductible for a prescription drug or device on the allowed amount of the drug or device; (3) establishes that coinsurance or deductible does not mean or include copayments; (4) prohibits a PBM from reimbursing a contracted pharmacy for a prescription drug or device in an amount that is less than the actual cost to that pharmacy for the prescription drug or device; (5) exempts a PBM from the requirement of reimbursing a contracted pharmacy in an amount that is less than the actual cost to that pharmacy when utilizing a reimbursement methodology that is identical to the methodology provided for in the

state plan for medical assistance approved by CMS; (6) requires such PBMs to establish a process for a pharmacy to appeal a reimbursement paid at average acquisition cost and receive an adjusted payment; (7) requires the Commissioner of DCI to approve a PBM appeals process; and (8) changes the effective date for when a covered entity is required to begin providing the cost, benefit and coverage data, including data for each drug covered under the enrollee's health plan in real time, upon request of an enrollee, an enrollee's healthcare provider, or the authorized representative of an enrollee, from July 1, 2021 to January 1, 2022.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures –

Exceeds \$1,615,300/FY21-22

Exceeds \$1,130,000/FY22-23 and Subsequent Years

Increase Federal Expenditures – \$5,860,900/FY21-22

\$2,033,200/FY22-23 and Subsequent Years

Increase Local Expenditures – \$74,800/FY21-22*

\$149,600/FY22-23 and Subsequent Years*

Assumptions for the bill as amended:

Division of TennCare:

- Based on information provided by the Division of TennCare (Division), to meet the requirements of the proposed legislations, the Division's three managed care organizations (MCOs) and PBM will have to implement and maintain a data system to share the required pharmacy related data in real time. Existing infrastructure for both the MCOs and PBM will be used and expanded on.
- It is assumed implementation of the data system will occur in FY21-22.
- The average cost per MCO for implementation of the data system is estimated to be \$1,046,000. The total cost for implementation for all three MCOs is estimated to be \$3,138,000 (\$1,046,000 x 3).
- Medicaid expenditures receive matching funds at a rate of 66.295 percent federal funds to 33.705 percent state funds. Of this amount, \$1,057,663 (\$3,138,000 x 33.705%) will be in state funds and \$2,080,337 (\$3,138,000 x 66.295%) will be in federal funds in FY21-22.
- Annual maintenance of the data system is estimated to be \$521,000 per MCO, per year.
- The total recurring cost for system maintenance for MCOs is estimated to be \$1,563,000 (\$521,000 x 3) in FY22-23 and subsequent years. Of this amount, \$526,809 (\$1,563,000 x 33.705%) will be in state funds and \$1,036,191 (\$1,563,000 x 66.295%) will be in federal funds.
- The costs associated with implementing the data system for each of the three MCOs are significantly less than the PBM due to the MCOs system being limited to physician administered and hospital-based medications. The PBM data system will be required to aggregate and exchange data from all three MCOs in addition to medication data.

- The costs associated with implementing the data system for the PBM in FY21-22 is estimated to be \$4,190,000. Medicaid administrative expenditures for investments in information technology receive matching funds at a rate of 90 percent federal funds to 10 percent state funds. Of this amount, \$419,000 ($\$4,190,000 \times 10.0\%$) will be in state funds and \$3,771,000 ($\$4,190,000 \times 90.0\%$) will be in federal funds.
- Annual maintenance of the PBM data system is estimated to be \$1,303,750.
- Medicaid administrative expenditures in FY22-23 and subsequent years for ongoing information technology expenses receive matching funds at a rate of 75 percent federal funds to 25 percent state funds. Of this amount, \$325,938 ($\$1,303,750 \times 25.0\%$) will be in state funds and \$977,813 ($\$1,303,750 \times 75.0\%$) will be in federal funds.
- Based on information provided by the Division, the TennCare pharmacy program utilizes a reimbursement methodology consistent with the state plan as approved by CMS and has an appeal process in place.
- The CoverKids and CoverRx programs may incur additional expenditures to meet the appeals process requirements. Any increase can be accommodated within current appropriations.

Division of Benefits Administration:

- The proposed legislation will apply to the State Group Insurance Plan that takes effect January 1, 2022.
- The increase in state expenditures is estimated to be \$196,776 for the State Plan, and \$80,438 for the Local Education Plan in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in state expenditures is estimated to be \$98,388 ($\$196,776 \times 50.0\%$) for the State Plan and \$40,219 ($\$80,438 \times 50.0\%$) for the Local Education Plan in FY21-22.
- Some state plan member's insurance premiums are funded through federal dollars. The increase in federal expenditures in FY22-23 and subsequent years is estimated to be \$19,224. Due to the January 1, 2022 effective date, the increase in federal expenditures is estimated to be \$9,612 ($\$19,224 \times 50.0\%$) in FY21-22.
- The state does not contribute to the Local Government Plan; any increase in premiums will be entirely absorbed by the participating agencies and their members.
- It is estimated the Local Government Plan would be responsible for a mandatory increase in local expenditures estimated to be \$149,563 in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in local expenditures is estimated to be \$74,782 ($\$149,563 \times 50.0\%$) in FY21-22.
- The impact on local governments that do not opt into the Local Government Plan is unknown; therefore, the total increase in local expenditures is estimated to exceed \$149,563 in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in local expenditures is estimated to exceed \$74,782 in FY21-22.

Department of Commerce and Insurance:

- The proposed legislation will not impact any programs or policies of the DCI; therefore, any fiscal impact is estimated to be not significant.
- The DCI can approve any appeals process within existing resources.

Total Impact:

- The total increase in state expenditures is estimated to exceed \$1,615,270 (\$1,057,663 + \$419,000 + \$98,388 + \$40,219) in FY21-22.
- The total recurring increase in state expenditures is estimated to exceed \$1,129,961 (\$526,809 + \$325,938 + \$196,776 + \$80,438) in FY22-23 and subsequent years.
- The total increase in federal expenditures is estimated to be \$5,860,949 (\$2,080,337 + \$3,771,000 + \$9,612) in FY21-22.
- The total recurring increase in federal expenditures is estimated to be \$2,033,228 (\$1,036,191 + \$977,813 + \$19,224) in FY22-23 and subsequent years.
- The total increase in local expenditures is estimated to exceed \$74,782 in FY21-22 and exceed \$149,563 in FY22-23 and subsequent years.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- The Division of TennCare's managed care organizations (MCO) and pharmacy benefits manager (PBM) will experience an increase in business expenditures to implement and maintain the new data system, estimated to be \$7,328,000 (\$1,476,663 + \$5,851,337) in FY21-22 and \$2,866,751 (\$852,747 + \$2,014,004) in FY22-23 and subsequent years. Such expenditures will be covered by state and federal funds, resulting in an equivalent increase in business revenue.
- The Division's PBM will have to hire 10 full-time employees to implement and maintain the data system; therefore, the jobs impact is estimated to be an additional 10 full-time positions.
- Due to multiple unknown factors, such as negotiated rates with PBMs and 340b entities, current rebate amounts, and specific drug prices, additional impacts to commerce and jobs cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/vh